

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 EASTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 CONFEDERATED TRIBES AND BANDS OF
6 THE YAKAMA NATION,

Case No. 13-1-0008

7 Petitioner,
8

ORDER OF DISMISSAL

9 v.

10 KLICKITAT COUNTY,
11

12 Respondent.
13

14 On October 11, 2013, Petitioner Confederated Tribes and Bands of the Yakama
15 Nation filed a Petition for Review. The Board conducted a Prehearing Conference, held
16 telephonically on November 13, 2013. Petitioner appeared through its attorney, Thomas
17 Zeilman. Klickitat County appeared through its attorney, Susan Drummond. Board member
18 Raymond Paoella convened the conference on behalf of Charles Mosher and Board
19 Member Nina Carter attended. Both parties in this Klickitat County case agreed at the
20 Prehearing Conference that the Board did not have subject matter jurisdiction in this matter
21 and the current case should be dismissed.
22
23

24 **DISCUSSION**

25 At the start of the Prehearing Conference, Mr. Paoella asked the parties to comment
26 on the jurisdiction of the Growth Management Hearings Board on this case in light of *Victor*
27 *Moore v. Whitman County*, 143 Wn.2d 96 (2001). In this case, Whitman County, similar to
28 Klickitat County, was neither required to nor had chosen to plan under RCW 36.70A.040
29 and the Court ruled that the Board lacked jurisdiction in the case, even though it involved a
30 county's critical areas ordinance. Since the *Moore* case was decided, the Legislature
31 amended the GMA sections interpreted by the court in *Moore*, but the Legislature did not
32

1 address Critical Area Ordinance appeals arising in a partial-planning county like Klickitat
2 County.

3 Since the GMA is silent on the topic of appeals involving counties that are neither
4 required to nor had chosen to plan under RCW 36.70A.040, it is not clear whether there is
5 any remedy available. But it is clear from the *Moore* case that the Growth Management
6 Hearings Board lacks statutory authority to hear and decide such cases.
7

8 ORDER

9
10 Based on the foregoing, the Petition for Review filed by the Confederated Tribes and
11 Bands of the Yakama Nation, Case No. 13-1-0008, is hereby dismissed.

12 DATED this 22nd day of November, 2013.
13
14

15 _____
16 Charles Mosher, Board Member
17

18 _____
19 Raymond Paoella, Board Member
20

21 _____
22 Nina Carter, Board Member
23
24

25
26 **Note: This is a final decision and order of the Growth Management Hearings Board**
27 **issued pursuant to RCW 36.70A.300.¹**
28
29

30 _____
31 ¹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final
decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW
34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to
review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized
to provide legal advice.